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<b>PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)</b>	Docket Number (Optional) EDSO01-00002
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First named inventor: Emery Randolph Best, et al

Application No.: 10/718,170

Art Unit: (Unknown)

Filed: November 20, 2003

Examiner: (Not Yet Assigned)

Title: METHOD AND SYSTEM FOR PREVENTING ILLITERACY IN SUBSTANTIALLY ALL MEMBERS OF A PREDETERMINED SET OF STUDENTS

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX: (703) 308-6916

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee** Small entity-fee \$ 750.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27. Other than small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m))**2. Reply and/or fee**A. The reply and/or fee to the above-noted Office action in the form of Response to Notice to File Missing Parts (identify type of reply): has been filed previously on \_\_\_\_\_.  
 is enclosed herewith.

B. The issue fee of \$ \_\_\_\_\_.

 has been paid previously on \_\_\_\_\_.  
 is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Best Available Copy  
The PTO did not receive the following  
listed item(s) Fee \$750.00

3. Terminal disclaimer with disclaimer fee

Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

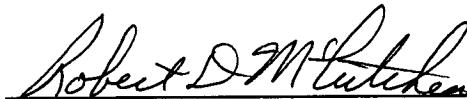
4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE. The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

October 17, 2005

Date

Telephone  
Number: 972-628-3600



Signature

Robert D. McCutcheon

Typed or printed name

P.O. Drawer 800889

Address

Dallas, Texas 75380

Address

Enclosures:  Fee Payment  
 Reply  
 Terminal Disclaimer Form  
 Additional sheets containing statements establishing unintentional delay  
 Other: Supplemental Statement in Support of Statement Under 37 CFR 3.73(b)

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

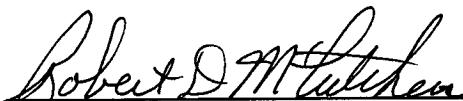
I hereby certify that this correspondence is being:

deposited with the United States Postal Service on the date shown below with sufficient postage as P.O. express mail in an envelope addressed to: **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

October 17, 2005

Date



Signature

Robert D. McCutcheon

Type or printed name of person signing certificate

O I P E  
Customer No. 23990  
42828  
OCT 17 2005  
PATENT & TRADEMARK OFFICE

DOCKET NO. EDSO01-00002

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : Emery Randolph Best, et al.  
U.S. Serial No. : 10/718,170  
Filed : November 20, 2003  
For : METHOD AND SYSTEM FOR PREVENTING ILLITERACY IN  
SUBSTANTIALLY ALL MEMBERS OF A PREDETERMINED  
SET OF STUDENTS  
Group No. : (Unknown)  
Examiner : (Not Yet Assigned)

**MAIL STOP PETITIONS**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**SUPPLEMENTAL STATEMENT IN SUPPORT OF**  
**PETITION TO REVIVE**

Petitioner (Edsoft Software Corporation) hereby provides the following statements in support of the Petition To Revive.

Accompanying the Petition to Revive are copies of (1) Statement Under 37 C.F.R. 3.73(b) and (2) Supplemental Statement In Support Statement Under 37 C.F.R. 3.73(b), filed concurrently herewith in the present application.

These documents establish Petitioner's right to proceed as the correct Assignee and seek revival of the present application.

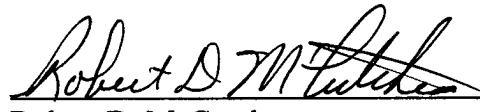
Petitioner has previously requested that the purported owner, Voyager Expanded Learning, Inc., seek revival of the present application, as the Petitioner recently learned of the abandonment and does not wish to abandon the application. This purported owner has refused to seek revival. Accordingly, Petitioner seeks revival to preserve its property rights in the present application.

Respectfully submitted,

DAVIS MUNCK, P.C.

On behalf of Edsoft Software Corporation

Date: 10/17/2005

  
\_\_\_\_\_  
Robert D. McCutcheon  
Registration No. 38,717

P.O. Drawer 800889  
Dallas, Texas 75380  
Phone: (972) 628-3600  
Fax: (972) 628-3616  
email: [rmccutcheon@davismunck.com](mailto:rmccutcheon@davismunck.com)



**DECLARATION AND POWER OF ATTORNEY  
FOR PATENT APPLICATION**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name;

I believe I am an original, first and joint inventor of the subject matter that is claimed and for which a patent is sought on the invention entitled:

**METHOD AND SYSTEM FOR PREVENTING ILLITERACY IN SUBSTANTIALLY ALL MEMBERS OF  
A PREDETERMINED SET OF STUDENTS**

the specification of which (check one)

is attached hereto.

was filed on \_\_\_\_\_

as Application Serial No. \_\_\_\_\_

and was amended on \_\_\_\_\_  
(if applicable)

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information that is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, §1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, §119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s):	Priority Claimed
-------------------------------	------------------

			No
(Number)	(Country)	(Day/Month/Year)	

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose information material to the patentability of this application as defined in Title 37, Code of Federal Regulations, §1.56 which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

---

(Application Serial #)

(Filing date)

(Status)

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that willful false statements may jeopardize the validity of the application or any patent issued thereon.

POWER OF ATTORNEY: As a named inventor, I hereby appoint the following attorneys and/or agents to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

William N. Hulsey, III, Reg. No. 33,402  
Theodore Stevenson, III, Reg. No. 39,040  
Robert A. McLauchlan; Reg. No. 44,924  
John R. Schell, Reg. No. P-50-776  
Peter R. Lando, Reg. No. 45,513

Send correspondence to: William N. Hulsey III, Hughes & Luce, L.L.P., 1717 Main Street, Suite 2800, Dallas, Texas 75201 and direct all telephone calls to Mr. Hulsey at 512/482-5400.

[Signature Pages Follow]

FULL NAME OF FIRST INVENTOR:

Emery Randolph Best

INVENTOR'S SIGNATURE:

Emery Randolph Best

DATE:

APRIL 12, 2002

RESIDENCE:

Dallas, Texas

CITIZENSHIP:

U.S.A.

POST OFFICE ADDRESS:

3510 Turtle Creek Blvd. #18C  
Dallas, Texas 75219

FULL NAME OF SECOND  
INVENTOR:

ANNE  
Jeri A. Nowakowski

Jeri Anne Nowakowski

INVENTOR'S SIGNATURE:

APRIL 12, 2002

DATE:

Plano, Texas

RESIDENCE:

U.S.A.

CITIZENSHIP:

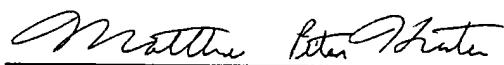
5205 Corinthian Bay Drive  
Plano, Texas 75093

POST OFFICE ADDRESS:

FULL NAME OF THIRD INVENTOR:

Matthew Peter Hunter

INVENTOR'S SIGNATURE:



DATE:

APRIL 12, 2002

RESIDENCE:

Dallas, Texas

CITIZENSHIP:

USA

POST OFFICE ADDRESS:

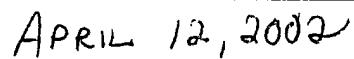
3700 W. Beverly  
Dallas, Texas 75209

FULL NAME OF FOURTH  
INVENTOR:

Stephan Randal Black



INVENTOR'S SIGNATURE:



DATE:

Colleyville, Texas

RESIDENCE:

USA

CITIZENSHIP:

3004 Glen Dale Drive  
Colleyville, Texas 76034

POST OFFICE ADDRESS:

DOCKET NO. EDSO01-00002

Customer No. 23990

PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

The application of : Emery Randolph Best, et al.

U.S. Serial No. : 10/718,170

Filed : November 20, 2003

For : METHOD AND SYSTEM FOR PREVENTING ILLITERACY IN  
SUBSTANTIALLY ALL MEMBERS OF A PREDETERMINED  
SET OF STUDENTS

Group No. : (Unknown)

Examiner : (Not Yet Assigned)

**MAIL STOP PETITIONS**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**SUPPLEMENTAL STATEMENT IN SUPPORT OF**  
**STATEMENT UNDER 37 C.F.R. 3.73(b)**

Assignee (Edsoft Software Corporation) hereby provides the following statements in support  
of the attached Statement Under 37 C.F.R. 3.73(b).

Accompanying the Statement Under 37 C.F.R. 3.73(b) are copies of two agreements (dated  
January, 16, 2001 and May 15, 2002 (as amended)) between Edsoft Software Corporation ("Edsoft")  
and Voyager Expanded Learning, Inc. ("Voyager") whereby Voyager agreed to assign all right, title  
and interest to Edsoft, and further agreed that "any and all inventions, modifications, enhancements,  
derivative works, discoveries, processes, methods, designs and know-how, whether or not

copyrightable or patentable, which Edsoft may conceive or make, either alone or with others . . . shall be the exclusive property of Edsoft." See, Section 5.0 of each agreement.

By virtue of the agreements, Edsoft claims that the present application is the exclusive property of Edsoft.

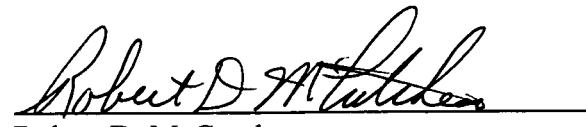
Edsoft has previously requested that Voyager formally assign issued U.S. Patent No. 6,676,413 (US. Application Serial No. 10/124,587), which is the parent application of this present application, and its subject matter, to Edsoft. Voyager has refused to assign these rights and property.

Respectfully submitted,

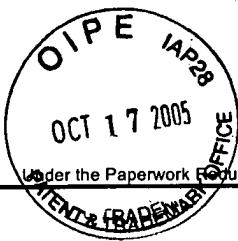
DAVIS MUNCK, P.C.

On behalf of Edsoft Software Corporation

Date: 10/17/2005

  
\_\_\_\_\_  
Robert D. McCutcheon  
Registration No. 38,717

P.O. Drawer 800889  
Dallas, Texas 75380  
Phone: (972) 628-3600  
Fax: (972) 628-3616  
email: [rmccutcheon@davismunck.com](mailto:rmccutcheon@davismunck.com)

**STATEMENT UNDER 37 CFR 3.73(b)**

Applicant/Patent Owner: Emery Randolph Best, Jeri Anne Nowakowski, Matthew Peter Hunter and Stephan Randal Black

Application No./Patent No.: 10/718,170 Filed/Issue Date: November 20, 2003

Entitled: METHOD AND SYSTEM FOR PREVENTING ILLITERACY IN SUBSTANTIALLY ALL MEMBERS OF A  
PREDETERMINED SET OF STUDENTSEdSoft Software Corporation, a Corporation  
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1.  the assignee of the entire right, title, and interest; or
2.  an assignee of less than the entire right, title and interest.  
The extent (by percentage) of its ownership interest is \_\_\_\_\_ %

in the patent application/patent identified above by virtue of either:

A.  An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

OR

B.  A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

1. From: Inventors To: Voyager Expanded Learning, Inc.  
The document was recorded in the United States Patent and Trademark Office at Reel 012837, Frame 0266, or for which a copy thereof is attached.
2. From: Voyager Expanded Learning, Inc. To: EdSoft Software Corporation  
The document was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.
3. From: \_\_\_\_\_ To: \_\_\_\_\_  
The document was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

 Additional documents in the chain of title are listed on a supplemental sheet. Copies of assignments or other documents in the chain of title are attached.

[NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

Signature

Kenneth A. Sumrall

Printed or Typed Name

Title

  
10/17/2005  
972

Date

Telephone Number

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

## Consulting Agreement - Terms and Conditions

### EdSoft Software Corporation

#### 1.0 Fees and Billing Practices

##### 1.1 Consulting and Training Fees

The following describes the terms and conditions under which EdSoft Software Corporation ("EdSoft" or "we") will charge for services provided to Voyager Expanded Learning ("Customer" or "you"). Unless expressly explained otherwise herein, fees quoted are based upon hourly billing rates and are not flat fees. You may enlist our assistance at whatever level you need, paying only for what you use. Since there are no fixed fees involved, you can exercise considerable control over your total consulting costs. Travel time outside of the Dallas area is billed at one half of the normal hourly rate. "Outside of the Dallas area" is defined as a location farther than 30 miles from our office located in North Dallas. In the interest of efficiency, on-site visits will be allocated a minimum of two hours.

1.1.1 Standard Hourly Rates. Our fees for consulting and development services are based primarily on the hourly rates in effect for each consultant in our firm at the time the services are rendered. Our consultants have the following standard hourly rates:

Staff Level	Standard Rate
Consulting Manager	150
Senior Consultant	125
Consultant	100

We review these rates periodically and they are subject to change. You will be notified in writing of any changes in rate.

1.1.2 Out-of-Pocket Expenses. Also included with our fee billings will be any out-of-pocket expenses incurred in the course of our service delivery to you. These expenses will be billed to you at our cost, unless other arrangements have been made in advance.

1.1.3 Payment. You will receive a semi-monthly invoice for services rendered and expenses. Payment for those fees and expenses will be made within 10 days of the date of that invoice. Any questions about the invoice will also be made within 10 days of the invoice date.

1.1.4 Billing. The reason we submit our bills to our clients on a semi-monthly basis shortly after the services are rendered is so you will have a ready means of monitoring and controlling the expenses you are incurring. If you believe the expenses are mounting too rapidly, please contact us immediately so we can assist you in evaluating how they might be curtailed or limited in the future. When we do not hear from you, we assume that you approve of the overall level of activity on our part in this engagement on your behalf.

You are requested to review each billing and to discuss any questions with your account executive concerning the level of activities, the nature of services rendered, and specific items on the bill prior to the next billing cycle. This allows us to quickly provide you responses to your queries.

1.1.5 Third Party Costs. We may have you pay an advance against any third-party costs which require out-of-pocket expenditures by us.

#### 2.0 Responsibility For Third Parties

A software implementation may involve the efforts of several parties: Software developers, hardware providers, consultants, your company personnel, and possibly others. While we guarantee our services, we cannot be responsible for the products and services of other parties not under our control. We will, however, work with you at our normal hourly rates to resolve any problems caused by incompatibilities or failures of other parties' products or services. This includes, but is not limited to, any of our time required to research, test, evaluate, restore corrupted or erroneous data, or consult with outside technical support resources for problems caused by bugs in software that we did not write. Likewise, we will bill for any time we spend helping you troubleshoot or repair computer hardware or accessories we did not provide.

**Consulting Agreement - Terms and Conditions**  
**EdSoft Software Corporation**

**Page 2 of 5**

**3.0 Warranties**

EdSoft warrants that it has full power and authority to enter into the consulting agreement and perform the Services contemplated therein. EdSoft warrants that all Services will be performed consistent with generally accepted industry standards. This warranty shall be valid for 90 days from performance of the Services. **EDSOFT DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES.**

**4.0 Confidentiality**

Because of the consulting engagement, the parties may have access to information that is confidential to one another ("Confidential Information"). "Confidential Information" means non-public information that the disclosing party designates as being confidential or which under the circumstances surrounding disclosure ought to be treated as confidential. "Confidential Information" includes, without limitation, information relating to the disclosing party's software or hardware products which may include source code, API data files, documentation, specifications, data bases, networks, system design, file layouts, tool combinations and development methods as well as information relating to the disclosing party's business or financial affairs, which may include business methods, marketing strategies, pricing, competitor information, product development strategies and methods, customer lists and financial results. Confidential Information also includes information received from others that the disclosing party is obligated to treat as confidential and oral information that is identified by the disclosing party as confidential. Confidential Information disclosed by a subsidiary of the disclosing party and/or its agents is covered by this Agreement. Confidential Information includes all tangible materials which contain Confidential Information whether written or printed documents, computer disks or tapes whether user or machine-readable. Confidential Information shall not include any information that (1) is already known to the receiving party or its affiliates, free of any obligation to keep it confidential; (2) is or becomes publicly known through no wrongful act of the receiving party or its affiliates; (3) is received by the receiving party from a third party without any restriction on confidentiality; (4) is independently developed by the receiving party or its affiliates; (5) is disclosed to third parties by the disclosing party without any obligation of confidentiality; or (6) is approved for release by prior written authorization of the disclosing party. The parties agree to maintain the confidentiality of the Confidential Information and to protect as a trade secret any portion of the other party's Confidential Information by preventing any unauthorized copying, use, distribution, installation or transfer of possession of such information. Each party agrees to maintain at least the same procedures regarding Confidential Information that it maintains with respect to its own Confidential Information. Without limiting the generality of the foregoing, neither party shall permit any of its personnel to remove any proprietary or other legend or restrictive notice contained or included in any material provided by the disclosing party and the receiving party shall not permit its personnel to reproduce or copy any such material except as expressly authorized thereunder. One party's Confidential Information may only be used by the other party in order to fulfill its obligations under this Agreement. Both parties acknowledge that any use or disclosure of the other party's Confidential Information in a manner inconsistent with the provisions of the engagement letter may cause the non-disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and both parties agree that the non-disclosing party may request injunctive or other equitable relief seeking to restrain such use or disclosure.

The terms and provisions of this Section 3 shall survive any termination of the engagement letter for any reason for a period of 5 years.

**Consulting Agreement - Terms and Conditions**  
**EdSoft Software Corporation**

Page 3 of 5

**5.0 Ownership of Work Product**

In the course of the consulting engagement, EdSoft may develop certain work products for Customer's use. All work products and all materials developed or prepared for Customer use by EdSoft are the property of EdSoft, and all right, title, and interest therein shall vest in EdSoft. All right, title and interest therein, including without limitation, all copyrights, are hereby irrevocably assigned to EdSoft. In addition, any and all inventions, modifications, enhancements, derivative works, discoveries, processes, methods, designs and know-how, whether or not copyrightable or patentable, which EdSoft may conceive or make, either alone or in conjunction with others, during the term of the consulting engagement, which in any way pertain to or are connected with the Services, shall be the sole and exclusive property of EdSoft.

Upon completion of any work products, EdSoft will provide Customer with a copy of the application source code for Customer's exclusive internal use and grant Customer an exclusive, royalty-free license to use the work products in connection with its internal business applications. Customer may not sell, lease, convey, assign, give, or transfer to any third-party in any manner any representation, form, or portion of any work products developed by EdSoft. Customer may not transfer or convey in any manner any representation, form, or portion of any software application(s) developed by EdSoft to any entity.

**6.0 Term and Termination**

The term of this consulting agreement shall commence on the date hereof and, unless earlier terminated as provided below, shall continue until completion of the services outlined in an engagement letter regarding the particular matter in which EdSoft shall act as a consultant under this agreement ("Services"). In the event of any breach of any term or provision of this consulting agreement by either party, the other party may cancel this consulting agreement by giving thirty (30) days prior written notice thereof; provided, however, that this consulting agreement shall not terminate at the end of the thirty (30) day notice period if the party in breach has cured the breach to the satisfaction of the other party prior to the expiration of the thirty (30) day period. In addition, Customer shall have the right to terminate this consulting agreement or any individual engagement letter without cause upon fifteen (15) days prior written notice to EdSoft. In such case, Customer shall be responsible for payment of all Services rendered prior to the date of termination.

**7.0 Limitation of Liability**

EdSoft's entire liability to Customer or any other party for any loss or damage resulting from any claims, demands or actions arising out of this consulting agreement or the performance or failure to perform the Services shall not exceed the fees paid to EdSoft for the Services.

**8.0 No Liability for Consequential Damages**

In no event shall EdSoft be liable for any indirect, incidental, consequential, special or exemplary damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss) arising out of this consulting agreement or the performance or failure to perform Services, or for acts of negligence that are not reckless or intentional in nature, even if EdSoft has been advised of the possibility of such damages.

**Consulting Agreement - Terms and Conditions**  
**EdSoft Software Corporation**

Page 4 of 5

**9.0 Independent Contractor**

EdSoft is an independent contractor. Neither EdSoft nor Customer are, or shall be deemed for any purpose to be, employees or agents of the other and neither party shall have the power or authority to bind the other party to any contract or obligation. EdSoft shall retain the right to perform work for others during the term of the consulting agreement.

**10.0 Governing Law**

The consulting engagement shall be governed by and construed in accordance with the laws of the State of Texas. Customer and EdSoft consent to the jurisdiction of the state courts of the State of Texas and U.S. District Court for the Northern District of Texas. The venue for any judicial action shall be Dallas County, Texas.

**11.0 Entire Agreement and Modifications**

Each party acknowledges that it has read the engagement letter and the exhibits attached thereto, and further agrees that the engagement letter and the exhibits thereto are the complete and exclusive statement of the parties and supersedes and merges all prior proposals understandings and agreements, oral or written, between the parties relating to the subject matter hereof, including without limitation, the terms of any customer request for proposal or the standard printed terms on any Customer purchase order. No modification, amendment, supplement to or waiver of this engagement letter or any exhibit hereunder shall be binding upon the parties hereto unless made in writing and duly signed by both parties.

Services provided pursuant to this agreement may be estimated and enumerated by specific supplemental proposals for work prepared by EdSoft and accepted by Customer. Unless otherwise documented and agreed to, all work performed by EdSoft will be governed by and subject to the terms and conditions specified in this agreement.

**12.0 Severability**

In the event any one or more of the provisions of this engagement letter or of any exhibit is held to be invalid or otherwise unenforceable, the enforceability of the remaining provisions shall be unimpaired.

**13.0 Arbitration**

Except for collection actions for payment of fees and for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any controversy or claim arising out of or relating to this engagement letter or to its breach shall be settled by arbitration by a single arbitrator in accordance with American Arbitration Rules, pursuant to an arbitration held in Dallas County, Texas, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The prevailing party shall be entitled to receive from the other party its attorneys fees and costs incurred in connection with any action, proceeding or arbitration hereunder.

**14.0 Hiring of EdSoft Personnel**

Customer acknowledges that EdSoft provides a valuable service by identifying and assigning personnel for Customer's work. Customer further acknowledges that Customer would receive substantial additional value and EdSoft would be deprived of the benefits of its work force, if Customer were to directly hire EdSoft's personnel after they have been introduced to Customer by EdSoft. Without the prior written consent of EdSoft, Customer shall not recruit or hire any personnel of EdSoft who are or have been assigned to perform work until one (1) year after the completion of the engagement in effect between the parties. In the event that Customer hires any personnel of EdSoft who are or have been assigned to perform work for Customer, Customer shall pay EdSoft within 60 days of the date of such hiring, an

**Consulting Agreement - Terms and Conditions**  
**EdSoft Software Corporation**

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amount equal to fifty percent (50%) of the total current-year compensation (twelve month) EdSoft pays such personnel as a fee for the additional benefit obtained by Customer.

**15.0 Force Majeure**

EdSoft shall not be responsible for failure to perform in a timely manner under this engagement letter when its failure results from any of the following causes; Acts of God or public enemies, civil war, insurrection or riot, fire, flood, explosion, earthquake or serious accident, strike, labor trouble or work interruption or any cause beyond its reasonable control.

**16.0 Going Concern**

During the term of this contract as defined in section 6.0 of this agreement, should EdSoft, its successors or assigns, cease to be a going concern, Customer shall no longer be bound by sections 5.0 and 14.0 of this agreement. During the term of this agreement, completed software products prepared specifically for Customer will be periodically provided to Customer in electronic format subject to 4.0 and 5.0.

**17.0 Counterparts**

This consulting agreement may be executed in two or more counterparts, each of which shall for all purposes be deemed an original and all of which shall constitute one and the same instrument.

EdSoft Software Corporation

By: Ken Sumrall

Ken Sumrall

Date: 1/16/2005

Agreed and Accepted:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Consulting Agreement - Terms and Conditions

### EdSoft Software Corporation

#### 1.0 Fees and Billing Practices

##### 1.1 Consulting and Training Fees

The following describes the terms and conditions under which EdSoft Software Corporation ("EdSoft" or "we") will charge for services provided to Voyager Expanded Learning ("Customer" or "you"). Unless expressly explained otherwise herein, fees quoted are based upon hourly billing rates and are not flat fees. You may enlist our assistance at whatever level you need, paying only for what you use. Since there are no fixed fees involved, you can exercise considerable control over your total consulting costs. Travel time outside of the Dallas area is billed at one half of the normal hourly rate. "Outside of the Dallas area" is defined as a location farther than 30 miles from our office located in North Dallas. In the interest of efficiency, on-site visits will be allocated a minimum of two hours.

1.1.1 Standard Hourly Rates. Our fees for consulting and development services are based primarily on the hourly rates in effect for each consultant in our firm at the time the services are rendered. Our consultants have the following standard hourly rates:

Staff Level	Standard Rate
Consulting Manager	150
Senior Consultant	125
Consultant	100

We review these rates periodically and they are subject to change. You will be notified in writing of any changes in rate.

1.1.2 Out-of-Pocket Expenses. Also included with our fee billings will be any out-of-pocket expenses incurred in the course of our service delivery to you. These expenses will be billed to you at our cost, unless other arrangements have been made in advance.

1.1.3 Payment. You will receive a semi-monthly invoice for services rendered and expenses. Payment for those fees and expenses will be made within 10 days of the date of that invoice. Any questions about the invoice will also be made within 10 days of the invoice date.

1.1.4 Billing. The reason we submit our bills to our clients on a semi-monthly basis shortly after the services are rendered is so you will have a ready means of monitoring and controlling the expenses you are incurring. If you believe the expenses are mounting too rapidly, please contact us immediately so we can assist you in evaluating how they might be curtailed or limited in the future. When we do not hear from you, we assume that you approve of the overall level of activity on our part in this engagement on your behalf.

You are requested to review each billing and to discuss any questions with your account executive concerning the level of activities, the nature of services rendered, and specific items on the bill prior to the next billing cycle. This allows us to quickly provide you responses to your queries.

1.1.5 Third Party Costs. We may have you pay an advance against any third-party costs which require out-of-pocket expenditures by us.

#### 2.0 Responsibility For Third Parties

A software implementation may involve the efforts of several parties: Software developers, hardware providers, consultants, your company personnel, and possibly others. While we guarantee our services, we cannot be responsible for the products and services of other parties not under our control. We will, however, work with you at our normal hourly rates to resolve any problems caused by incompatibilities or failures of other parties' products or services. This includes, but is not limited to, any of our time required to research, test, evaluate, restore corrupted or erroneous data, or consult with outside technical support resources for problems caused by bugs in software that we did not write. Likewise, we will bill for any time we spend helping you troubleshoot or repair computer hardware or accessories we did not provide.

#### 3.0 Warranties

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**EdSoft Software Corporation**

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EdSoft warrants that it has full power and authority to enter into the consulting agreement and perform the Services contemplated therein. EdSoft warrants that all Services will be performed consistent with generally accepted industry standards. This warranty shall be valid for 90 days from performance of the Services. EDISOFT DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES.

**4.0 Confidentiality**

Because of the consulting engagement, the parties may have access to information that is confidential to one another ("Confidential Information"). "Confidential Information" means non-public information that the disclosing party designates as being confidential or which under the circumstances surrounding disclosure ought to be treated as confidential. "Confidential Information" includes, without limitation, information relating to the disclosing party's software or hardware products which may include source code, API data files, documentation, specifications, data bases, networks, system design, file layouts, tool combinations and development methods as well as information relating to the disclosing party's business or financial affairs, which may include business methods, marketing strategies, pricing, competitor information, product development strategies and methods, customer lists and financial results. Confidential Information also includes information received from others that the disclosing party is obligated to treat as confidential and oral information that is identified by the disclosing party as confidential. Confidential Information disclosed by a subsidiary of the disclosing party and/or its agent is covered by this Agreement. Confidential Information includes all tangible materials which contain Confidential Information whether written or printed documents, computer disks or tapes whether user or machine-readable. Confidential Information shall not include any information that (1) is already known to the receiving party or its affiliates, free of any obligation to keep it confidential; (2) is or becomes publicly known through no wrongful act of the receiving party or its affiliates; (3) is received by the receiving party from a third party without any restriction on confidentiality; (4) is independently developed by the receiving party or its affiliates; (5) is disclosed to third parties by the disclosing party without any obligation of confidentiality; or (6) is approved for release by prior written authorization of the disclosing party. The parties agree to maintain the confidentiality of the Confidential Information and to protect as a trade secret any portion of the other party's Confidential Information by preventing any unauthorized copying, use, distribution, installation or transfer of possession of such information. Each party agrees to maintain at least the same procedures regarding Confidential Information that it maintains with respect to its own Confidential Information. Without limiting the generality of the foregoing, neither party shall permit any of its personnel to remove any proprietary or other legend or restrictive notice contained or included in any material provided by the disclosing party and the receiving party shall not permit its personnel to reproduce or copy any such material except as expressly authorized thereunder. One party's Confidential Information may only be used by the other party in order to fulfill its obligations under this Agreement. Both parties acknowledge that any use or disclosure of the other party's Confidential Information in a manner inconsistent with the provisions of the engagement letter may cause the non-disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and both parties agree that the non-disclosing party may request injunctive or other equitable relief seeking to restrain such use or disclosure.

The terms and provisions of this Section 3 shall survive any termination of the engagement letter for any reason for a period of 5 years.

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**5.0 Ownership of Work Product**

In the course of the consulting engagement, EdSoft may develop certain work products for Customer's use. All work products and all materials developed or prepared for Customer use by EdSoft are the property of EdSoft, and all right, title, and interest therein shall vest in EdSoft. All right, title and interest therein, including without limitation, all copyrights, are hereby irrevocably assigned to EdSoft. In addition, any and all inventions, modifications, enhancements, derivative works, discoveries, processes, methods, designs and know-how, whether or not copyrightable or patentable, which EdSoft may conceive or make, either alone or in conjunction with others, during the term of the consulting engagement, which in any way pertain to or are connected with the Services, shall be the sole and exclusive property of EdSoft.

Upon completion of any work products, EdSoft will provide Customer with a copy of the application source code for Customer's exclusive internal use and grant Customer an exclusive, royalty-free, perpetual license to use the work products, and to modify, enhance, and make derivative works of the work products in connection with its internal business applications. Customer may not sell, lease, convey, assign, give, or transfer to any third-party in any manner any representation, form, or portion of any work products developed by EdSoft Software. Customer may not transfer or convey in any manner any representation, form, or portion of any software application(s) developed by EdSoft to any entity.

**6.0 Term and Termination**

The term of this consulting agreement shall commence on the date hereof and, unless earlier terminated as provided below, shall continue until completion of the services outlined in an engagement letter regarding the particular matter in which EdSoft shall act as a consultant under this agreement ("Services"). In the event of any breach of any term or provision of this consulting agreement by either party, the other party may cancel this consulting agreement by giving thirty (30) days prior written notice thereof; provided, however, that this consulting agreement shall not terminate at the end of the thirty (30) day notice period if the party in breach has cured the breach to the satisfaction of the other party prior to the expiration of the thirty (30) day period. In addition, Customer shall have the right to terminate this consulting agreement or any individual engagement letter without cause upon fifteen (15) days prior written notice to EdSoft. In such case, Customer shall be responsible for payment of all Services rendered prior to the date of termination.

**7.0 Limitation of Liability**

EdSoft's entire liability to Customer or any other party for any loss or damage resulting from any claims, demands or actions arising out of this consulting agreement or the performance of or failure to perform the Services shall not exceed the fees paid to EdSoft for the Services.

**8.0 No Liability for Consequential Damages**

In no event shall EdSoft be liable for any indirect, incidental, consequential, special or exemplary damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss) arising out of services provided under this consulting agreement or the performance or failure to perform Services, or for acts of negligence that are not reckless or intentional in nature, even if EdSoft has been advised of the possibility of such damages.

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**9.0 Independent Contractor**

EdSoft is an independent contractor. Neither EdSoft nor Customer are, or shall be deemed for any purpose to be, employees or agents of the other and neither party shall have the power or authority to bind the other party to any contract or obligation. EdSoft shall retain the right to perform work for others during the term of the consulting agreement.

**10.0 Governing Law**

The consulting engagement shall be governed by and construed in accordance with the laws of the State of Texas. Customer and EdSoft consent to the jurisdiction of the state courts of the State of Texas and U.S. District Court for the Northern District of Texas. The venue for any judicial action shall be Dallas County, Texas.

**11.0 Entire Agreement and Modifications**

Each party acknowledges that it has read the engagement letter and the exhibits attached thereto, and further agrees that the engagement letter and the exhibits thereto are the complete and exclusive statement of the parties and supersedes and merges all prior proposals understandings and agreements, oral or written, between the parties relating to the subject matter hereof, including without limitation, the terms of any customer request for proposal or the standard printed terms on any Customer purchase order. No modification, amendment, supplement to or waiver of this engagement letter or any exhibit hereunder shall be binding upon the parties hereto unless made in writing and duly signed by both parties.

Services provided pursuant to this agreement may be estimated and enumerated by specific supplemental proposals for work prepared by EdSoft and accepted by Customer. Unless otherwise documented and agreed to, all work performed by EdSoft will be governed by and subject to the terms and conditions specified in this agreement.

**12.0 Severability**

In the event any one or more of the provisions of this engagement letter or of any exhibit is held to be invalid or otherwise unenforceable, the enforceability of the remaining provisions shall be unimpaired.

**13.0 Arbitration**

Except for collection actions for payment of fees and for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any controversy or claim arising out of or relating to this engagement letter or to its breach shall be settled by arbitration by a single arbitrator in accordance with American Arbitration Rules, pursuant to an arbitration held in Dallas County, Texas, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The prevailing party shall be entitled to receive from the other party its attorneys fees and costs incurred in connection with any action, proceeding or arbitration hereunder.

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**17.0 Counterparts**

This consulting agreement may be executed in two or more counterparts, each of which shall for all purposes be deemed an original and all of which shall constitute one and the same instrument.

EdSoft Software Corporation

By: Ken Sumrall

Date: 5/15/2002

Agreed and Accepted:

By: R. R.

Title: Vice President of Information Technology

Date: 5/15/02

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